

From: Mia, Marcia
Sent: Thursday, February 01, 2018 01:48 PM
To: Kaminer, Joan
CC: Cox, John
Subject: RE: Perkins-Coie FR Notice language

Thanks Joan I left you a voice mail about another issue just a moment ago. You can disregard the part about the regional email as it is addressed below.

Marcia B Mia, Acting Chief

Air Branch

Office of Compliance

2227A WJCS

U.S. Environmental Protection Agency

202-564-7042

From: Kaminer, Joan
Sent: Thursday, February 01, 2018 8:46 AM
To: Mia, Marcia <Mia.Marcia@epa.gov>
Cc: Cox, John <cox.john@epa.gov>
Subject: RE: Perkins-Coie FR Notice language

Hi Marica,

Ex. 5 Attorney Client (AC)

Based on the above, I do have one change to the draft email:

Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

Joan G. Kaminer

Attorney-Advisor

EPA/OGC/GLO/ILPG

202-564-0334

Kaminer.joan@epa.gov

From: Kaminer, Joan

Sent: Tuesday, January 30, 2018 12:55 PM

To: Mia, Marcia <Mia.Marcia@epa.gov>

Cc: Cox, John <Cox.John@epa.gov>

Subject: RE: Perkins-Coie FR Notice language

Hi Marcia, I am about to leave for an appointment and I need to circle with my management on the follow-up phone call question tomorrow morning.

Otherwise, I don't have any edits to the email as written.

A few quick answers to your other questions:

Ex. 5 Attorney Client (AC)

(1) For a corporation: A president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities and

either:

(i) The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars); or

(ii) The delegation of authority to such representative is approved in advance by the Administrator.

(2) For a partnership or sole proprietorship: a general partner or the proprietor, respectively.

(3) For a municipality, State, Federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of this part, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of the EPA).

(4) For affected sources (as defined in this part) applying for or subject to a title V permit: "responsible official" shall have the same meaning as defined in part 70 or Federal title V regulations in this chapter (42 U.S.C. 7661), whichever is applicable.

Joan G. Kaminer

Attorney-Advisor

EPA/OGC/GLO/ILPG

202-564-0334

Kaminer.joan@epa.gov

From: Mia, Marcia

Sent: Tuesday, January 30, 2018 12:25 PM

To: Kaminer, Joan <Kaminer.Joan@epa.gov>

Cc: Cox, John <cox.john@epa.gov>

Subject: RE: Perkins-Coie FR Notice language

I kept thinking I forgot something. Added it below in red.

They should know what to do about the files which are PBI, correct? Is there something I should point them to for marking those in FOIA online?

Will you have a chance to get back to me today on this? I would like to get it out to the regions today, if possible.

Marcia B Mia, Acting Chief

Air Branch

Office of Compliance

2227A WJCS

U.S. Environmental Protection Agency

202-564-7042

From: Mia, Marcia

Sent: Monday, January 29, 2018 5:26 PM

To: Kaminer, Joan <Kaminer.Joan@epa.gov>

Cc: Cox, John <Cox.John@epa.gov>

Subject: RE: Perkins-Coie FR Notice language

Here is what I would do for my FOIA, but some questions.

Is the "responsible official" the person we identify in our rule as the certifier?

For the follow-up phone call how many days do they give them to call back.

Ex. 5 Deliberative Process (DP)

Email

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Marcia B Mia, Acting Chief

Air Branch

Office of Compliance

2227A WJCS

U.S. Environmental Protection Agency

202-564-7042

From: Kaminer, Joan

Sent: Monday, January 29, 2018 2:55 PM

To: Mia, Marcia <Mia.Marcia@epa.gov>

Subject: RE: Perkins-Coie FR Notice language

OTAQ Email:

The U.S. Environmental Protection Agency has received a request under the Freedom of Information Act (FOIA) for records containing information related to registered producers of landfill biogas under the Renewable Fuel Standard (RFS) Program. This FOIA request is attached. The records requested include those containing information on: the location of each digester and landfill where biogas is sourced for production

of compressed natural gas or liquified natural gas that has been registered with the EPA to generate RFS RINs ; the location of all parties selling, delivering, or using transportation fuel produced from the biogas; identification of all commercial pipeline systems or other transportation methods used to transport biogas from production to transportation use; any contractual arrangements among parties to ship/transport biogas, and the chain of title of the biogas and environmental attributes from the location of biogas production to the location where it is used as transportation fuel.

We believe it is possible that the Engineering Review (ER) or Reviews, and any updates, addenda and/or attachments (e.g. contracts, maps, etc.) to the ER or ERs, submitted on behalf of your company pursuant to RFS registration provisions in 40 CFR 80.1450, may contain information responsive to the FOIA request.

By your response to this email, please indicate whether you wish to assert a confidential business information (CBI) claim with respect to any portion of any ER or any addendum, update or attachment to an ER, that your company has submitted to EPA. If you decide to such a claim the EPA will temporarily treat the ER you identify, and its updates, attachments and addenda, as confidential pending further investigation by the EPA. Please be advised that as part of such further investigation EPA is likely to request (in a subsequent communication) that you substantiate any CBI claim. If you do not assert a timely (see below) CBI claim with respect to any portion of an ER or its addenda, updates or attachments, as described above, those records may be released to the requestor without further notice if EPA determines that the records are responsive to the FOIA request.

You have been identified by EPA as the responsible corporate officer, under the FOIA regulations in 5 U.S.C. 552. Any CBI claim your company wishes to assert must be brought to the EPA's attention (by response to this email) no later than the close of business on the third working day from the date of this notice. If you have any questions regarding this matter, please contact Kurt Gustafson at 202-343-9219.

Joan G. Kaminer

Attorney-Advisor

EPA/OGC/GLO/ILPG

202-564-0334

Kaminer.joan@epa.gov

From: Mia, Marcia

Sent: Monday, January 29, 2018 12:46 PM

To: Kaminer, Joan <Kaminer.Joan@epa.gov>

Subject: RE: Perkins-Coie FR Notice language

Will you do this?

Marcia B Mia, Acting Chief

Air Branch

Office of Compliance

2227A WJCS

U.S. Environmental Protection Agency

202-564-7042

From: Kaminer, Joan

Sent: Friday, January 26, 2018 11:42 AM

To: Mia, Marcia <Mia.Marcia@epa.gov>

Subject: RE: Perkins-Coie FR Notice language

Hi Madison,

I thought it might be helpful to do a quick overview of the CBI process at the start of the call on Monday. I wanted to clarify the steps that should take place first, before communicating with the affected businesses and that the substantiation/determination process is farther down the line. The FR Notice we discussed would come into play in the substantiation process which is after the initial denial. We discussed other uses of the FR notice but, as I mentioned, we've only used it for the substantiation process and then only once that I'm aware of.

Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

I'm including an excerpt from the regs for your reference:

(c) Determining existence of business confidentiality claims. (1) Whenever action under this paragraph is required by paragraph (b)(2) of this section, the EPA office shall examine the information and the office's records to determine which businesses, if any, are affected businesses (see §2.201(d)), and to determine which businesses if any, have asserted business confidentiality claims which remain applicable to the information. If any business is found to have asserted an applicable claim, the office shall take action under paragraph (d) of this section with respect to each such claim.

(2)(i) If the examination conducted under paragraph (c)(1) of this section discloses the existence of any business which, although it has not asserted a claim, might be expected to assert a claim if it knew EPA proposed to disclose the information, the EPA office shall contact a responsible official of each such business to learn whether the business asserts a claim covering the information. However, no such inquiry need be made to any business-

(A) Which failed to assert a claim covering the information when responding to an EPA request or demand, or supplying information on an EPA form, which contained the substance of the statements prescribed by §2.203(a);

(B) Which otherwise failed to assert a claim covering the information after being informed by EPA that such failure could result in disclosure of the information to the public; or

(C) Which has otherwise waived or withdrawn a claim covering the information.

(ii) If a request for release of the information under 5 U.S.C. 552 is pending at the time inquiry is made under this paragraph (c)(2), the inquiry shall be made by telephone or equally prompt means, and the responsible official contacted shall be informed that any claim the business wishes to assert must be brought to the EPA office's attention no later than the close of business on the third working day after such inquiry.

(iii) A record shall be kept of the results of any inquiry under this paragraph (c)(2). If any business makes a claim covering the information, the EPA office shall take further action under paragraph (d) of this section.

(3) If, after the examination under paragraph (c)(1) of this section, and after any inquiry made under paragraph (c)(2) of this section, the EPA office knows of no claim covering the information and the time for response to any inquiry has passed, the information shall be treated for purposes of this subpart as not entitled to confidential treatment.

Joan G. Kaminer

Attorney-Advisor

EPA/OGC/GLO/ILPG

202-564-0334

Kaminer.joan@epa.gov

From: Mia, Marcia

Sent: Thursday, January 25, 2018 10:41 AM

To: Kaminer, Joan <Kaminer.Joan@epa.gov>

Subject: RE: Perkins-Coie FR Notice language

Joan

Thank you. I left you a voice mail, but here is the gist.

Each of the regions have responsive records, so on a region by region basis the notice the companies that their info may be released under the FOIA may be manageable (R6 and 8 may be an exception).

Is it possible to send a global email to the companies - each in the bcc so they don't see the other? We can use request receipt and receipt when read to track them.

Let me know if this can work. I'm meeting with the group this afternoon and wanted to provide some guidance.

This is the email we used before:

Ex. 5 Deliberative Process (DP)

Thanks!

Marcia B Mia, Acting Chief

Air Branch

Office of Compliance

2227A WJCS

U.S. Environmental Protection Agency

202-564-7042

From: Kaminer, Joan

Sent: Tuesday, January 23, 2018 12:49 PM

To: Mia, Marcia <Mia.Marcia@epa.gov>

Subject: Perkins-Coie FR Notice language

Hi Marcia, Attached is the FR notice language we discussed. Let me know if I can help as you move forward.

Thanks,

Joan G. Kaminer

Attorney-Advisor

EPA/OGC/GLO/ILPG

202-564-0334

Kaminer.joan@epa.gov